U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: NOV 18 2009
LIN 08 109 51070

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as an accountant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's conclusion that the petitioner has not demonstrated the beneficiary's eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states, in pertinent part: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.*

The beneficiary holds a baccalaureate degree in accounting from the Philippine School of Business Administration followed by more than five years of experience as a bookkeeper and ultimately an accounting supervisor. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary thus qualifies as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The intrinsic merit of accounting is not at issue in this proceeding. The director then concluded that the proposed benefits of the beneficiary's work, development of a program for the petitioner to

provide free dental services to those who cannot afford dental care, would not be national in scope. Throughout the proceeding and again on appeal, counsel asserts that the program will serve as a national model. The petitioner initially asserted that community based programs "do not initially take root" but speculated that if the beneficiary's program succeeds, "our model can be expanded to any community in this nation."

In addressing this issue, *NYSDOT* states:

> [T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

22 I&N Dec. at 217, n.3

As with dental care for all residents regardless of income, legal services for those without financial means, education and nutrition are all areas that are important at the national level. The above footnote makes clear, however, that the national importance of an issue is insufficient. The question is whether the activity inherent to the proposed occupation would result in benefits that are discernible at the national level. It is not enough to conceive of a means whereby the beneficiary's work could eventually have a national impact. To hold otherwise would render the national scope requirement meaningless. Rather, the petitioner must demonstrate that the proposed employment is within a framework that typically has such an impact, such as the alien in *NYSDOT*, who worked on the proper maintenance of bridges and roads *already connected* to the national transportation system. 22 I&N Dec. at 217.

We concur with the director that an accountant working for a single dental office, with no prior history as an established national model for the provision of free dental care, would not produce discernible benefits that are national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Much of the record documents the problem of lack of access to oral health care for children in lower income communities. Eligibility for the waiver must rest with the alien's own qualifications rather

than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218.

Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Significantly, the beneficiary in this matter is the beneficiary of two alien employment certifications, one of which supports an approved visa petition in a lesser classification, LIN 08 156 51146. The approved alien employment certification is not an argument that a waiver of that process is in the national interest. If anything, it demonstrates how unnecessary the waiver request is. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

While we acknowledge that the approved visa petition is in a lesser classification, the petitioner has not demonstrated that the national interest waiver was intended to allow professionals with five or more years of experience seeking employment in an occupation that does not require an advanced degree to secure a higher classification by proposing a wholly unproven project.

[redacted] of the petitioning dental office, notes that the beneficiary has over ten years of experience in accounting. As acknowledged by [redacted], that experience was with a bank, not a dental office seeking to develop a program whereby it could serve patients unable to afford a private dentist. [redacted] continues that the petitioner "will formulate our specific business plan for our low income family dental services program." [redacted] continues:

> We will establish a parallel non-profit foundation that can be classified for charitable purposes under section 510(c)(3) [*sic*] of the Internal Revenue Code. [The beneficiary] will then locate sources of funding from various pools of both private funds and whenever possible public funding locations. Our initial budget may be approximately $100,000 as we start to provide care, to line up dental professionals who will work with us on a voluntary or near voluntary basis, and to monitor the program for time lines, objective and goals. Finally, she will develop community based informational programs to provide outreach, and more importantly media coverage so that our good works can reach out [to] those in need while also generating support for additional funding and higher level services to the needed [*sic*]. I know that this program will be successful, if only given a chance. In addition, we will take this model to dental associations in other states and regions, with an effort to expand upon our base and to help other like minded professionals to start similar programs in their communities. Like community based services from Neighborhood Watch to community based policing, these programs work best with local

practitioners who know what is needed and which children are most in need of this type of care.

[redacted] does not assert that the beneficiary has any experience establishing a non-profit foundation, raising funds from public and private sources and marketing low cost services in lower income communities.

On January 7, 2009, the director requested evidence that the beneficiary has a "past record of specific prior achievement that justifies projections of future benefit to the national interest." In response, counsel asserted that the petitioner was submitting evidence verifying the beneficiary's "prior important charitable works" performed in the Philippines and the United States.

The petitioner submitted letters confirming the beneficiary's membership in and work with charitable groups. Specifically, the petitioner submitted a February 5, 2009 letter from [redacted] Chairperson and Founder of Restored Heritage Foundation, Inc., confirming that the beneficiary is a "participating member" in the foundation's free medical-dental clinic. Specifically, the beneficiary "assists and helps audit donations (in the form of cash and medicines) as well as financial expenses." [redacted] does not indicate that the beneficiary had performed these services prior to the date of filing, February 27, 2008, although the foundation is based in Manila where the beneficiary has not resided since 2002. Regardless, [redacted] does not indicate that the beneficiary helped set up the Restored Heritage Foundation as a non-profit, raised funds for the clinic from public and private sources and marketed the clinic in low income communities. Rather, it appears that the beneficiary performed basic accounting services for the charitable foundation. Such basic accounting duties cannot establish that the beneficiary has a track record of success for establishing, seeking funding for, and marketing free or low-cost dental services at a private dental office that can serve as a model at the national level.

[redacted] of the Rotary Club in Quezon City, simply confirms that the beneficiary was "involved in various activities of the Rotary Club, particularly in the medical-dental mission." [redacted] to the Citizen Anti-drug Action Group in Quezon City, confirms only that the beneficiary is "a bonfied [*sic*] member of this Foundation." Finally, [redacted] at Redor, Emerson and Company (a general professional accounting partnership in the Philippines), confirms that the beneficiary is "a bonafide participating member of this organization." These letters do not establish that the beneficiary has any experience establishing the type of model non-profit program she plans to develop for the petitioner.

At issue is whether this beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. The record contains no evidence that the beneficiary has any experience creating the type of model program envisioned by the petitioner.

Rather, she has accounting education and experience qualifying her for a job as an accountant, a position for which the petitioner has already obtained an alien employment certification and an approved visa petition on behalf of the beneficiary. As stated above, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. In a similar vein, we are not persuaded that the national interest waiver was intended as a means for employers to qualify a beneficiary who otherwise qualifies for classification as a professional pursuant to section 203(b)(3) of the Act for a higher classification pursuant to section 203(b)(2).

Finally, we note that [redacted] alleges:

> Due to the forces of 9/11, the Homeland Security reorganization resulted in hundreds of thousands of employment based immigrant visas vanishing from our system. Our program and this beneficiary now suffer, as no visas remain available to complete his [sic] immigrant process now after six (6) years in queue.

This assertion is ill-defined and unsubstantiated. Congress, not USCIS or the Department of Homeland Security (DHS), sets numerical and country limits for employment-based immigration. Sections 201(d) and 202 of the Act. The petitioner does not assert that these sections were amended after September 11, 2001. [redacted] does not assert that the beneficiary's approved employment-based immigrant visa petition, LIN 08 156 51146, "vanished." In fact, that petition is contained in the beneficiary's alien file. [redacted] does not explain how the fact that the priority date is not yet current for the classification sought in that petition pursuant to section 203(b)(3) of the Act, is a result of "vanished" visas after September 11, 2001. We reiterate that nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process, which includes waiting for visas to become available in the classification for which an alien is eligible. *See id.* at 223.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.